

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/20/2023

TONIMARIE RHONE, *on behalf of herself  
and all other similarly situated,*

Plaintiff,

-against-

PINK GORILLA, LLC,

Defendant.

1: 23-cv-06001-MKV

ORDER OF DISMISSAL

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff initiated this action by filing a complaint on July 12, 2023. [ECF No. 1]. On October 16, 2023, the Court issued an Order noting that “[a] review of court records indicates . . . that no proof of service has been filed.” [ECF No. 5]. Citing Rule 4(m) of the Federal Rules of Civil Procedure, the Order stated that:

If a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

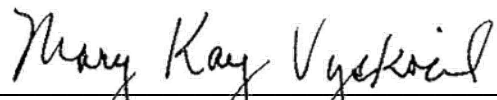
The Court directed Plaintiff to serve Defendant and file proof of service on the docket **on or before November 16, 2023**. [ECF No. 5]. The Court cautioned that “[i]f service has not been made on or before that date, and if plaintiff fails to show cause, in writing, why service has not been made, the complaint will be dismissed for failure to prosecute pursuant to Rules 4 and 41 of the Federal Rules of Civil Procedure.” [ECF No. 5].

To date, no responses have been filed and Plaintiff has not prosecuted this case. Accordingly, IT IS HEREBY ORDERED that the above-captioned action is discontinued for failure to prosecute without costs to any party and without prejudice to restoring the action to this

Court's calendar if the application to restore the action is made by December 20, 2023. If no such application is made by that date, today's dismissal of the action is with prejudice. *See LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

**SO ORDERED.**

**Date: November 20, 2023**  
**New York, NY**

  
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**MARY KAY VYSKOCIL**  
**United States District Judge**